



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,259	09/16/2003	Norman S. Martucci	79287.21520	1456
36734 7590 02/28/2008 BAKER & HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304				
EXAMINER				
AFTERGUT, JEFF H				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
02/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/663,259

**Applicant(s)**

MARTUCCI, NORMAN S.

**Examiner**

Jeff H. Aftergut

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6, 7, 9-13, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7 and 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 13, 16, 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Drawings***

1. The replacement drawings sheets for Figures 1 and 2 were received on 12-27-
07. These drawings are approved.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Japanese Patent 2001-289366 or Mathews et al (US 2002/0056511) in view of any one of Bates et al '743, Bates et al '282, Marzocchi et al '830, Marzocchi et al '123, or Marzocchi '452 further taken with Gareis, Dennis and Fawley et al for the same reasons as clearly expressed in paragraph 7 of the Office action dated August 27, 2007.

***Election/Restrictions***

4. This application contains claims 6, 7 and 9-12 drawn to an invention nonelected with traverse in the reply filed on 4-28-06. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Response to Arguments***

5. Applicant's arguments filed 12-27-07 have been fully considered but they are not persuasive.

The applicant's definition of the terms wheel and pulley have been considered and have been determined by the examiner to be sufficient to overcome the previous rejection that the original disclosure failed to teach that one skilled in the art would not have understood that applicant had rotation of the wheels in his possession. Additionally, original claim 8 does support the capability of adjusting the wheels in both the horizontal and vertical direction. The 112, first paragraph rejection has thus been overcome by the response submitted by applicant.

The applicant argues regarding the prior art rejection that: (1) the rejection is the combination of five different references and that the number of references applied is evidence that the claimed invention was in fact unobvious; (2) the number of references applied is indicative of the use of the specification as a blueprint or roadmap for the rejection and such hindsight is impermissible; (3) the heading of the rejection is confusing in that it would appear because of the alternative rejections presented that there are ten different rejections being made against the claims and that this is a terrible burden for applicant to respond to, and; (4) the prior art applied failed to teach the opening of a braid with rotatable wheels which were capable of being adjusted vertically and horizontally in order to facilitate impregnation in a bath with an emulsion of a polymer material. These arguments have not been found to be persuasive.

To begin with, regarding the heading of the rejection and the making of 10 separate rejections to reject the claim, the applicant is advised that the rejection is in reality just the combination of five references where for some of the evidence teachings plural references were applied to show by a preponderance of the evidence that those skilled

Art Unit: 1791

in the art would have practiced or performed the relevant teachings. In other words, both the references to Japanese Patent 2001-289366 or Mathews et al (US 2002/0056511) suggested to those skilled in the art that it was known at the time the invention was made to form a braided hose assembly by applying a braided reinforcing material about an inner tubular layer, dispersing a polymeric material and a carrier fluid into the braided material to fill the interstices of the braided assembly and sintering the braided assembly after coating with the dispersion. The references both suggested that the braided hose assembly would have been fed through a reservoir in order to fill the interstices of the braid. Clearly, one viewing the prior art rejection would have understood that by a preponderance of the evidence one skilled in the art would have known to feed a braided assembly through a reservoir to infiltrate an emulsion into the same. In a like manner, the references to any one of Bates et al '743, Bates et al '282, Marzocchi et al '830, Marzocchi et al '123, or Marzocchi '452 were cited to show by a preponderance of the evidence that that in a reservoir bath one skilled in the art desiring to impregnate a fiber bundle wherein the interstices or gaps between the fibers were completely infiltrated with resin would have incorporated a means to open the fibers up within the coating bath. Thus one viewing the rejection would not have been confused as to what the rejection was, rather each and every of the alternative references were cited to establish that not only were the specified techniques known by the artisan but rather that these techniques were well known and accepted by the ordinary artisan as commonplace in the art. The fact that applicant has to reply to the 10 different rejections is immaterial to the question of obviousness under 35 USC 103.

The applicant also notes that the use of five different teachings is evidence of unobviousness of the claimed invention and that the Office clearly used the disclosure as a roadmap in making the rejection (hindsight). These arguments are likewise not persuasive. As noted above, the references to either one of Japanese Patent 2001-289366 or Mathews et al (US 2002/0056511) established that it would have been obvious to those skilled in the art to employ a reservoir of emulsion to impregnate a braided assembly in a like manner to that claimed. The specific construction of the impregnating reservoir is not defined by these references. The references to any one of Bates et al '743, Bates et al '282, Marzocchi et al '830, Marzocchi et al '123, or Marzocchi '452 established that within a reservoir, when coating a filament assembly, one skilled in the art would have included wheels or rollers or rods within the reservoir over and under which the material being impregnated passed in order to ensure complete impregnation of the resin into the filament assembly wherein the use of the rollers or wheels therein worked the resin into the filaments and spread the filaments apart so that the same was better impregnated. Clearly, the reservoir of either one of Japanese Patent 2001-289366 or Mathews et al (US 2002/0056511) would have included a means to work the resin into the fiber therein in order better impregnate the filaments of the braid. As noted by applicant, the references to Bates et al '743, Bates et al '282, Marzocchi et al '830, Marzocchi et al '123, or Marzocchi '452 did not establish that such processing would have been included in a reservoir for treating a fiber material in the form of a braided assembly. However, one viewing Gareis would have understood that working of a braided fiber assembly with rollers or wheels in a reservoir

Art Unit: 1791

would have been reasonably expected to improve impregnation of the braid with the material from the reservoir. When one views the prior art as a whole, one would have understood that the reservoir of either one of Japanese Patent 2001-289366 or Mathews et al (US 2002/0056511) would have included rollers therein in order to enhance the impregnation operation by working the resin into the fibers as the fiber assembly was passed over and under the same as well as spread the fibers apart in order to ensure adequate impregnation. There appears to be motivation to include the wheels or rollers within the reservoir and as such, it is not seen how one can possibly argue that the rejection is based upon hindsight reconstruction using applicant's disclosure as a roadmap to make the rejection. Additionally, the inclusion of the references to Fawley as well as Dennis is likewise NOT based upon such hindsight. Fawley expressed that the ability to position the rollers in a reservoir horizontally would have allowed one to regulate the tension that the fibers were under and thus provided one with a means to improve the impregnation of the fibers with the material in the reservoir. Likewise, Dennis suggested that the ability to adjust the rollers in a reservoir vertically to control the contact the fibers made with the rollers (the contact angle of the same) and thus regulate the work applied by the rollers upon the material being impregnated (in order to control the impregnation operation). Clearly, one viewing the references to Dennis and Fawley would have understood that it would have been within the purview of the ordinary artisan designing a reservoir for impregnation of a braided assembly to provide the roller or wheel structure within the reservoir with the ability to be adjusted both vertically (Dennis) as well as horizontally (Fawley) as such

Art Unit: 1791

adjustments allowed one to ensure the impregnation operation took place in an efficient and effective manner. Clearly there was justification to provide such adjustability. It should be noted that the claims as presented do NOT require that the rollers actually be adjusted in both the horizontal and vertical directions but rather that they are capable of such an adjustment. Clearly using the teachings of Dennis and Fawley one skilled in the art would have been motivated to provide for the adjustability of the rollers or wheels within the reservoir. As noted above, where there is reason to justify the modification there cannot be hindsight reconstruction as the references when considered as a whole would have suggested the modification of the prior art in a way which rendered the proposed claim obvious to those skilled in the art.

Regarding the last argument that the prior art did not teach the invention where the braided assembly was subjected to impregnation in a reservoir with rotated adjustable wheels therein wherein the wheels were adjustable in both the vertical and horizontal direction, the applicant is referred to the discussions above regarding the prior art and the prima facie case as it relates to hindsight. As noted, the ordinary artisan would have been motivated to make the combination of five reference teachings and apply the same together when considered as a whole. As such, the claimed invention has been rendered obvious by such teachings.

No claims are allowed.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:30-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1791

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeff H. Aftergut  
Primary Examiner  
Art Unit 1791

/Jeff H. Aftergut/  
Primary Examiner, Art Unit 1791  
February 20, 2008